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Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company d/b/a SBC Illinois to Amend Existing Interconnection Agreements to Incorporate the *Triennial Review Order* and the *Triennial Review Remand Order*	)	**Docket No. 05-0442**

REBUTTAL TESTIMONY OF

FRANCES McCOMB

Addressing Issues 11, 12 and 13

August 29, 2005

CLEC EXHIBIT 3.1

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Frances McComb. My business address is 6805 Route 202, New Hope, Pennsylvania 18938.

Q. ARE YOU THE SAME FRANCES McCOMB WHO SUBMITTED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

Q. PLEASE STATE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A. The purpose of my rebuttal testimony is to respond to the testimony filed by Mr. Michael Silver on behalf of SBC Illinois and the testimony filed by Mr. Mark Hanson (Issues 11 and 12) and by Dr. Genio Staranczak (Issue 13) on behalf of the Staff of the Illinois Commission regarding the transition of the embedded base of CLECs' customers that are served using UNE-P, and non-recurring charges for the transition of the embedded base of other UNEs to other services.

II. RATES APPLICABLE TO UNE-P ARRANGEMENTS NOT TRANSITIONED BY MARCH 11, 2006
(disputed issue 12)

Q. WHAT IS AT ISSUE IN THIS DISPUTE?

A. The parties' dispute is simply this: "what rate applies to any UNE-P arrangements that remain unconverted by March 11 of next year?" The parties have agreed that having a "default" rate that will apply until the UNE-P line is converted is appropriate, but they have not agreed on what that rate should be.

Q. HAVE YOU READ MR. HANSON'S TESTIMONY ON THIS ISSUE?

A. Yes, I have.

Q. DO YOU AGREE WITH HIS VIEW OF WHAT IS AT THE CORE OF THIS ISSUE?

A. No, I do not, because I do not think Mr. Hanson was considering the factual situation that CLECs are addressing in their proposal. Mr. Hanson refers to my testimony and concludes that the fact that CLECs want to retain UNE-P at TELRIC rates for as long as possible is no reason to accept CLECs' proposed language. But, my testimony—that is, the portion of my testimony with which Mr. Hanson disagrees—refers to Issue 13 and really has little bearing on Issue 12. Issues 12 and 13 are two distinct issues: Issue 13 deals with what rate a CLEC should pay *up to* March 11 while Issue 12 deals with what rate a CLEC should pay *after* March 11 *if* the transition of a particular UNE-P line is not completed yet.

Q. WHAT DOES MR. HANSON RECOMMEND AS TO THE RATE A CLEC SHOULD PAY IF A UNE-P LINE IS NOT YET TRANSITIONED ON MARCH 11, 2006?

A. Mr. Hanson does not discuss the merits or drawbacks of the parties' two proposals, nor does he conclude—one way or the other—that either the Total Service Resale rate or SBC's Local Wholesale Complete rate should be the default rate. I recognize that he says SBC's proposed language should be approved,[1] but he offers no analysis of the two options that the parties have put before the Commission in this arbitration. Instead, his

[1] Staff Ex. 5.0, Hanson at 6, lines 123-124.

testimony focuses on the time frame available for CLECs to complete the transition. Specifically, he states that the FCC's transition plan does not mean that CLECs "have the right to remain on UNE-P rates for 11 months and 29 days." I read his testimony to say that CLECs should simply act quickly and then the "default rate" issue will not exist.

Q. IS THAT REALISTIC?

A. No, it is not. Both SBC and CLECs recognize the virtual certainty that some UNE-P lines will not have been transitioned by March 11. Both parties consider it prudent to state what rate will apply if this occurs.

Q. DO YOU BELIEVE MR. HANSON OVERLOOKED ISSUE 12 AMONG ALL THE ISSUES THE COMMISSION IS BEING ASKED TO DECIDE?

A. I believe he may not have considered the issue independently of Issue 13, perhaps due to the fact that I grouped the two issues in my testimony. It is clear that Mr. Hanson's view is that CLECs have ample time to move off UNE-P and know what their options are. But, he seems to have accepted SBC's argument that the *only* reason a default rate is needed is because CLECs are dragging their feet and refusing to obey the FCC's order. Nothing in his testimony indicates that he has considered the possibility that SBC may make an error, or that a CLEC could have submitted its orders to transition to resale and inadvertently an order for one or a few UNE-P lines is left out or does not get processed.

Q. ARE SUCH ERRORS POSSIBLE?

A. Errors are always possible. And it is this situation that the CLECs are addressing. CLECs are not looking to avoid their obligation to submit orders to migrate their services off of UNE-P and on to other arrangements. The *TRRO* requires CLECs to take action.

But Mr. Hanson is being unrealistic to think that in the environment of significant changes and significant work to be accomplished by CLECs and SBC, not one error will occur.

Q. BUT ISN'T THERE A LIKELIHOOD THAT CLECS WILL JUST SIT BACK AND DO NOTHING?

A. To ask that question assumes that CLECs will deliberately ignore the FCC's order. It also assumes that CLECs' management (and investors) have "given up" and are no longer running their companies. Any CLEC that would choose to submit no orders at all for transitioning its customers that are served by UNE-P to some other service arrangement would have, in effect, ceded control of its cost structure to SBC. I am not aware of any CLEC that would choose to do that. CLECs are very concerned with maintaining their service to their customers and they necessarily are concerned with controlling their costs. Survival depends on actively managing their business. This is a challenging time for CLECs, a time that requires them to rethink and reconsider their business plans and make changes. "Doing nothing" is not a strategy that leads to success in times like these and I am not aware of any CLEC that thinks "doing nothing" is the way to protect its investors' or customers' interests.

Q. HAVE YOU READ THE DIRECT TESTIMONY OF SBC'S WITNESS MR. SILVER?

A. Yes, I have.

Q. MR. SILVER STATES ON PAGE 26 OF HIS TESTIMONY THAT IF A CLEC FAILS TO MEET ITS OBLIGATION UNDER THE *TRRO*, THE CLEC

"SHOULD NOT BE DICTATING THE TERMS UNDER WHICH THEY WILL BE CHARGED AFTER MARCH 10, 2006." IS THAT CLECs' OBJECTIVE HERE?

A. Not at all. What CLECs want is certainty and a reasonable re-pricing of any UNE-P arrangements that are not converted before—that is, the conversion is not completed by—the date the transition period ends. SBC is arguing that the *only* reason any UNE-P arrangement will not have been converted by March 11, 2006, is because CLECs deliberately refuse to abide by the FCC's ruling in the *TRRO*. SBC's argument is based on an assumption that a CLEC will place *no* orders for converting its UNE-P lines. It is wholly inappropriate for the Commission to make a decision on contract language in this arbitration based on an assumption that CLECs are scofflaws and will not abide by the FCC's Order. There could be a number of reasons why some UNE-P arrangements were not converted on time, including inadvertent error on the CLEC's part in submitting orders and error on SBC's part in performing a conversion.

Q. MR. SILVER CONTENDS THAT USING THE LOCAL WHOLESALE COMPLETE RATE IS NECESSARY, BECAUSE OTHERWISE CLECs WILL HAVE LITTLE INCENTIVE TO SUBMIT THEIR ORDERS FOR TRANSITIONING UNE-P ARRANGEMENTS. DO YOU AGREE?

A. No. Apparently, SBC wants to convince the Commission that only the threat of imposing the highest possible rate will cause CLECs to abide by the FCC's Order. SBC apparently believes that the appropriate course to take is to set up the most "punitive" alternative

available—unknown rates.[2] As I already testified, CLECs have their own business incentives, their own reasons, for controlling how the transition will be accomplished and what substitute service arrangement to use. Of course, SBC's perspective is advantageous to it, because it would allow SBC to obtain the most revenue possible for any UNE-P lines that do not complete transition by March 11.

Q. MR. SILVER SAYS ON PAGE 26 OF HIS TESTIMONY THAT THERE ARE OPERATIONAL PROBLEMS WITH THE CLECs' PROPOSAL. DO YOU AGREE WITH HIS CONCLUSIONS ON THIS POINT?

A. No, I do not. The "problem" he identifies consists of a vague reference to SBC Illinois not having the ability to convert all of the features on a mass market UNE-P account to a resold account. He states that SBC must have an actual CLEC request in order to establish a resold line. Mr. Silver's discussion on this point again assumes that Issue 12 has arisen because CLECs do not intend to submit orders. This is not the case. Issue 12 exists because it is prudent to acknowledge the possibility that certain end user customer accounts may have been overlooked and may require the submission of orders after the omission is discovered. CLECs are not attempting to create an "orderless" transition mechanism by way of Issue 12. Once a CLEC order is submitted, all information about end user features will be documented.

Mr. Silver's other attempt to establish operation problems is to argue that a CLEC may currently be offering a feature to a UNE-P end user that is not available on a resold basis, citing voice mail as an example. But, notably he provides no details. He

[2] I say unknown rates because SBC's Local Wholesale Complete rates are unregulated and can change at any time.

asserts that functionality will be lost, but he does not explain why this would happen. If it is as obvious and certain a result as Mr. Silver would have the Commission believe, it is incredible to assert that CLECs are ignorant of the limits of SBC's resale service and will not take care to transition customers who have any feature that could be "lost" to something other than Total Resale.

But, the real problem with Mr. Silver's testimony is that it misses the point. CLECs are not asking SBC to *convert* the UNE-P arrangements that remain on March 12, 2006, to resale, but are asking SBC to *re-price* them at the resale rate until the UNE-P arrangements are converted or disconnected. This is a pricing issue, not a service issue. CLECs want a known default price, not a default service. This is a temporary situation that CLECs are addressing in the contract language, not a permanent one.

Q. DOES MR. SILVER EXPLAIN WHY SBC CONSIDERS THE LOCAL WHOLESALE COMPLETE RATES TO BE THE REASONABLE DEFAULT CHOICE?

A. Yes. Mr. Silver states that "[t]hese are real world, market-based rates."[3] SBC has not explained the basis for claiming that a market exists for local switching. CLECs should not be forced to execute a commercial agreement with SBC and become contractually bound to the terms and conditions of the lengthy Local Wholesale Complete Agreement by default. And, in fact, I do not think that that is what Mr. Silver is proposing. Instead it appears that SBC simply intends "to charge the then-prevailing month-to-month rates

[3] SBC Ex. 1.0, Silver at 27.

for its Local Wholesale Complete offering."[4] If SBC has the ability to apply these rates as the default price, it has the ability to apply the resale rates as the default price.

III. CLECS' PROPOSED SECTION 2.14—APPLICATION OF THE TRANSITION RATES FOR ULS/UNE-P UNTIL THE END OF THE TRANSITION PERIOD

(disputed issue 13)

Q. EARLIER YOU TESTIFIED THAT MR. HANSON APPARENTLY OVERLOOKED ISSUE 12 AND THE PARTIES' CONFLICTING PROPOSALS, PERHAPS BECAUSE YOU ADDRESSED ISSUES 12 AND 13 TOGETHER IN YOUR DIRECT TESTIMONY. DID MR. HANSON ADDRESS ISSUE 13 IN HIS TESTIMONY?

A. No, Dr. Staranczak addressed issue 13.

Q. DO YOU AGREE WITH DR. STARANCZAK'S CONCLUSIONS REGARDING ISSUE 13?

A. No. I gather that Dr. Staranczak disagrees that an appropriate policy choice the Commission can make for dealing with the competing incentives for CLECs and SBC would be to separate the operational transition of UNE-P access lines to other arrangements from the date on which new prices apply. Obviously, the Commission must weigh the parties' perspectives and the options available, and make its own determinations. I am troubled, however, and do not understand or agree with Dr. Staranczak's conclusion that the Commission should reject CLECs' proposal because the Commission should not "subsidize the CLECs at SBC's expense" in order to

[4] *Id.*

guarantee that CLECs make prudent business decisions.[5] I find his choice of words very odd. The concept of "subsidization" when used in a pejorative sense means that one person is receiving an illegal or unfair financial benefit at the expense of someone else. A "subsidy" of course can also mean something benign—a policy choice regarding financial incentives for certain types of agriculture for example. I am not sure what Dr. Staranczak intended, but CLECs' proposal provides no pricing benefit to which CLECs are not entitled under the express terms of the *TRRO*. The FCC's Order states that transition pricing will continue until March 11. Moreover, I do not understand what Dr. Staranczak means in stating that CLECs' proposal would subsidize CLECs "at SBC's expense."[6] SBC is not required to provide ULS/UNE-P at a rate less than the TELRIC rates that were set by this Commission, rates it approved only concluding that these rates recovered SBC's forward-looking costs. TELRIC pricing principles require this result. Furthermore, the FCC determined that an appropriate level of compensation for UNE-P through the duration of the transition period was TELRIC plus $1.00. There is nothing confiscatory or unfair about CLECs paying the transition rates until the transition period is over.

Q. DO YOU STILL CONSIDER THE CLECs' PROPOSAL THE BETTER POLICY FOR THE COMMISSION TO ADOPT?

A. Yes, I do. I stand by my direct testimony on this issue.

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5 Staff Ex. 4.0, Staranczak at 11, lines 226-230.

6 *Id.*

Q. MR. SILVER SAYS ON PAGES 28-29 OF HIS TESTIMONY THAT CLECs ARE NOT ENTITLED TO UNE-P AND UNBUNDLED SWITCHING AT ALL AND THAT SBC SHOULD BE RECEIVING MARKET-BASED RATES RIGHT NOW. DO YOU AGREE?

A. No, I do not. The question before the Illinois Commission is what does the *TRRO* require for the transition and what terms in the Amendment are consistent with and implement the transition in the most reasonable manner. The history of the unbundling rules is not the issue here. All that his testimony on this subject reveals is SBC's frustration that it did not get what it wanted—namely, an immediate end to ULS and UNE-P as a combination priced at TELRIC.

Q. MR. SILVER ALSO SAYS ON PAGE 29 OF HIS TESTIMONY THAT THE TRANSITION PERIOD AND PROCESS THAT THE FCC SET OUT IN THE *TRRO* "IS SIMPLY A DEFAULT PROCESS" AND THAT CARRIERS CAN "NEGOTIATE ALTERNATIVE ARRANGEMENTS SUPERSEDING THIS TRANSITION PERIOD." DO YOU AGREE?

A. I agree that the FCC made that statement in the *TRRO*. The FCC in paragraph 228 made it clear that as carriers proceeded to implement the unbundling decisions of the *TRRO*, the parties were free to agree as part of the Section 252(a)(1) process to a transition wholly different from the one the FCC outlined.[7] But, the fact that CLECs and ILECs could *agree* to something else, including something inconsistent with subsections (b) and

[7] Section 252(a)(1) states, in part, that "an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and (c) of section 251."

(c) of Section 251, does not mean that the FCC's transition plan is rendered ineffective if SBC *wants* something else and the CLEC does not agree. The key point the FCC was making in paragraph 228 was that the parties had the right to agree to something else and the FCC was not interfering with that right. CLECs and SBC did negotiate on the issue in dispute here, but the negotiation was not successful and therefore the FCC's transition plan is the one that governs.

Q. MR. SILVER ALSO SAYS ON THE SAME PAGE THAT THE FCC EXPRESSLY SAID THAT THE TRANSITIONAL RATES DO NOT SUPERSEDE STANDARD RATES FOR COMMERCIAL ARRANGEMENTS ONCE THE TRANSITION TO THOSE ARRANGEMENTS HAS OCCURRED. DO YOU AGREE WITH HIS POINT?

A. No, because Mr. Silver is reading too much into the FCC's statement. Mr. Silver contends that whatever the rates were or are in an SBC offered commercial agreement, those rates apply to any CLEC that elects to take that agreement during the transition period. That is not what the FCC said. The FCC was addressing agreements that existed at the time the *TRRO* was released, not future agreements between the parties.

What the FCC said was that:

> The transition mechanism adopted today also does not replace or supersede any commercial arrangements *carriers have reached* for the continued provision of UNE-P or for a transition to UNE-L.[8]

Thus, the FCC was making clear that it was not overriding any agreement a CLEC had reached *prior to* the time the *TRRO* was released. The FCC was not imposing a transition

[8] *TRRO* paragraph 228 (emphasis supplied).

plan that would be contrary to what CLECs and ILECs already had agreed to; instead, it said that the existing agreements carriers had reached would not be changed by the *TRRO*.

What Mr. Silver really is arguing in his testimony is something else. He is contending that any CLEC that had not entered into any commercial agreement when the *TRRO* was issued has no right now to negotiate or arbitrate its own transition terms.

Q. PLEASE EXPLAIN.

A. The FCC explicitly refrained from dictating how its unbundling decisions and how the transition would be implemented. In paragraph 233 of the *TRRO,* the FCC directed carriers to negotiate changes to their interconnection agreements implementing any rates, terms and conditions necessary to put the conclusions in the *TRRO* and the FCC's rules into effect. And, in paragraph 228 the FCC made it clear that it was not negating or changing agreements CLECs and ILECs already had executed dealing with the transition plan, nor requiring CLECs and ILECs to adhere to the transition plan going forward if they reached agreement on an alternative plan. The common thread in these pronouncements in the *TRRO* is that it is the parties' agreement that will determine how the transition will occur, but if there is no agreement then the FCC's transition plan controls as implemented through the Section 252 process.

Q. IS THE CLECs' PROPOSED LANGUAGE IN SECTION 2.1.4 CONSISTENT WITH PARAGRAPH 228 OF THE *TRRO*?

A. Yes, it is. Section 2.1.4 states as follows:

> **Notwithstanding the foregoing provisions of Section 2.1 and unless the CLEC specifically requests or has contractually agreed otherwise, to**

the extent an Embedded Base ULS/UNE-P customer is migrated to a functionally equivalent alternative service arrangement prior to March 11, 2006, the ULS/UNE-P Transition Rate shall continue to apply until March 11, 2006.

Thus, the CLECs' proposed language, like the *TRRO*, does not supersede or replace any contractual arrangement a CLEC has made with SBC. Instead it applies to CLECs that have no other contractual agreement that addresses the transition in Illinois.

Q. WHAT ABOUT MR. SILVER'S CLAIM THAT THE CLECs' PROPOSAL WOULD LEAD TO "ABSURD AND UNFAIR" RESULTS?[9]

A. This claim makes very little sense when you look at it closely. SBC is arguing that all CLECs must have an identical result. Requiring an identical result is inconsistent with the Act's focus on individual interconnection agreements between CLECs and ILECs. It is inconsistent with paragraph 228 of the *TRRO* in which the FCC expressly allows CLECs and ILECs to negotiate their own transition arrangements.

Mr. Silver couches his argument in terms of CLEC A "acting responsibly" and CLEC B "being rewarded for delay" but CLECs' decisions to enter contracts at any given time are always subject to the risk that circumstances may change. And, they reflect each CLEC's individual business plan and interpretation of the regulatory arena. CLEC A may have opted into SBC's Local Wholesale Complete offering prior to the release of the *TRRO* in order to obtain certainty and predictability for its operations and its costs. CLEC B may have rejected the Local Wholesale Complete offering because its business plan is to convert to its own switching and UNE-L and it planned to convert within a time

[9] SBC Ex. 1.0, Silver at 30.

frame it hoped the FCC would set in the *TRRO* as the transition period. These motives have nothing to do with "acting responsibly" or "delay."

Notably, SBC argues in this same Direct Testimony that CLECs must bear the risk of their decisions and be held accountable for their decisions. At page 33, Mr. Silver recognizes that risk is a normal part of business decisions. He argues that CLECs must bear the risk of their decisions, irrespective of changes in the FCC's unbundling rules.

> Any customer that opts into a term agreement faces the risk of wanting to terminate before the expiration of the full term. CLECs could have chosen a lesser discount in exchange for a shorter term. CLECs are proposing preferential treatment *vis a vis* every customer that did not elect a longer term (and thus a greater discount) in order to minimize their potential exposure to situations such as this.[10]

SBC is arguing out of both sides of its mouth. According to Mr. Silver, if CLEC A "misjudged" the regulatory situation and opted for a long term contract, it should bear the risk that a long term contract will have been the wrong choice and that it will incur early termination penalties that drive up its costs compared to those of its competitors. If CLEC A finds itself at a competitive disadvantage compared to other CLECs so be it. But, if CLEC B "misjudged" the regulatory arena and opted for Local Wholesale Complete prior to the *TRRO*, Mr. Silver says it is absurd and unfair to require it to bear the risk of that decision. SBC claims its interest is in treating CLECs equally, but the only common ground in SBC's position on these two issues is to make sure CLECs are treated equally whenever doing so results in CLECs paying maximum rates.

Q. IN YOUR DIRECT TESTIMONY YOU STATED THAT SBC's INTERPRETATION ON THIS ISSUE IS AT ODDS WITH THE FCC's

[10] *Id.* at 33, lines 909-913.

OBJECTIVES. HAS YOUR POSITION CHANGED NOW THAT YOU HAVE READ DR. STARANCZAK'S AND MR. SILVER'S TESTIMONY?

A. No. I continue to be of the opinion that SBC's view would create the wrong set of incentives for the parties. As a practical matter, the only way to ensure an orderly transition of the embedded base is to eliminate all financial incentives to the contrary.

If SBC's position were to prevail, the CLECs would have the incentive to wait until the latest possible time to place orders to migrate their embedded UNE-P base, while at the same time SBC would have every incentive to overstate and exaggerate implementation challenges in order to get as many UNE-P customers converted as early as possible in order to charge the higher rate at the earliest possible time. Rather than create this disruptive and dysfunctional scenario, the FCC chose to eliminate such incentives by applying the ULS/UNE-P Transition Rate to the CLECs' embedded base of UNE-P customers until the end of the twelve-month transition period, even when those customers are migrated to an SBC functionally equivalent service arrangement prior to the end of the period, in order to complete all migrations by the FCC-mandated date of March 11, 2006.

By concluding that the UNE-P transition rate set in the *TRRO* will apply to all of the embedded base being transitioned to an SBC functionally equivalent service until a specific date — March 11, 2006 — the FCC chose not to tie the imposition of higher rates for new service arrangements to the *time* of a CLEC's transition, but to a *date certain*. In CLECs' view, this decision effectively eliminates all CLEC incentives to wait until the last minute (*i.e.*, the eve of March 11, 2006) to submit its orders to migrate its

UNE-P customers in order to take advantage of the lower rate for as long as possible – a course of action certainly likely to jeopardize an orderly and timely transition.

IV. NONRECURRING CHARGES—CONVERSION OF EMBEDDED BASE UNE-P AND OTHER UNEs TO ANOTHER SERVICE ARRANGEMENT

(disputed issue 11)

Q. WHAT IS THE DISPUTE REGARDING NON-RECURRING CHARGES FOR TRANSITIONED UNE-P ARRANGEMENTS?

A. SBC's witness Mr. Silver contends that the Amendment should contain identical language for transitioning UNE-P as agreed to elsewhere for other conversions.[11] The circumstances regarding the transition of embedded base of UNE-P access lines are not the same as those for other services, however. In recognition of those different circumstances, CLECs are proposing the following language:

> **SBC shall not impose any termination, reconnection, disconnection or other nonrecurring charges, except for an Electronic Service Order (Flow Through) Record Simple charge, associated with any conversion or any discontinuance of a TRO Remand Affected Element.**

Q. WHAT IS THE RATIONALE BEHIND THIS PROPOSED LANGUAGE?

A. The purpose behind this proposed language with respect to UNE-P is to recognize that the transition to arrangements other than UNE-P in many instances will be a transition to another service that does not involve *any* physical change in the serving arrangement that SBC is providing to CLECs. CLECs' options right now, in terms of SBC-provided arrangements, are to (1) order Total Service Resale or (2) order Local Wholesale Complete. With respect to each of these options, the physical arrangement of facilities is

[11] SBC Ex. 1.0, Silver at 22-23.

unchanged. There is no "disconnection" or "reconnection" taking place. There is no physical work associated with transitioning UNE-P lines to Resale or Local Wholesale Complete.

Q. MR. SILVER SAYS ON PAGE 23 THAT IT WOULD BE CONFUSING TO HAVE MORE THAN ONE SECTION OF THE AMENDMENT ADDRESS NON-RECURRING CHARGES IN DIFFERENT TERMS. DO YOU AGREE?

A. No. Interconnection agreements already are complex documents. This difference adds no confusion; the parties are well able to apply different terms to different services and different situations and have been doing so successfully for many years.

Q. MR. SILVER ALSO STATES ON THAT SAME PAGE THAT USING THE ELECTRONIC SERVICE ORDER CHARGE FOR FLOW THROUGH IS NOT APPROPRIATE BECAUSE NOT ALL ORDERS ARE SUBMITTED ELECTRONICALLY AND NOT ALL ORDERS WILL FLOW THROUGH. DO YOU AGREE?

A. No, because the situation being addressed here is dealing with a transition, not new orders. For the two existing options available to CLECs – ordering Resale or ordering Local Wholesale Complete – it is rare that an order submitted electronically does not flow through to completion. The need for manual intervention should be even less for a transition given that the ordering information the CLEC is providing to SBC is for an *existing* customer and the *retention* of that customer's service arrangement. SBC wants to treat these CLEC orders as if they were full-blown new service orders, but they are not.

Mr. Hanson seems to agree with SBC on this issue,[12] but I am not sure from his brief statement concerning these charges whether he intends non-electronic charges to only apply to orders that fall out for manual handling or something more.

Q. ISN'T IT TRUE, HOWEVER, THAT CLECs WILL ALSO CONVERT UNE-P ARRANGEMENTS TO THEIR OWN LOCAL SWITCHING AND UNE LOOPS OBTAINED FROM SBC?

A. Yes, they will, which is why the issue of batch hot cut processes is important to this Arbitration. But for CLECs that are now relying on UNE-P this type of conversion requires significant investment and network planning to acquire and install switches, and to determine what service areas can be converted to this arrangement. Remember that CLECs are making changes in every state in which they operate. I doubt that any CLEC now relying on UNE-P is contemplating a *total* conversion — for every customer it now serves — to UNE loops with self-provided switching or third-party-provided switching by next March. Many of the existing UNE-P arrangements will physically remain in place but be called something else – like resale – and billed at a different rate. Also, Section 2.1.3.3 of the Amendment will only apply to the UNE-P transition taking place between now and next March. When in the future a CLEC is ready to move off resold services or off Local Wholesale Complete to its own switch (or a third party's switch) and UNE Loops, this Section of the Amendment regarding non-recurring charges will not apply.

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[12] Staff Ex. 5.0, Hanson at 4, lines 79-81.

For those conversions that will take place from UNE-P to UNE Loops between now and next March, SBC will not go uncompensated for work performed. CLECs will pay for hot cuts associated with these conversions of existing customers. Thus, it is not correct that SBC will not be compensated at all for physical work performed.

Q. WHAT ABOUT DISCONNECTION CHARGES?

A. Mr. Hanson agrees that it is entirely possible that CLECs could be double-charged for disconnection costs.[13] I offered two alternative means for assuring that double-charging would not occur. Mr. Hanson has recommended that CLECs be credited with these costs when disconnecting lines, and CLECs agree that this means of dealing with the issue is reasonable and should be adopted by the Commission.

Q. MR. SILVER DESCRIBES THE TASKS THAT SBC MUST PERFORM TO CONVERT A UNE TO SPECIAL ACCESS AS A REASON TO REJECT CLECs' PROPOSED SECTION 2.1.3.3.[14] DO THOSE TASKS APPLY TO THE UNE-P TRANSITION YOU ADDRESS IN YOUR TESTIMONY?

A. No, they do not. It is inconceivable to me that any UNE-P arrangement will be converted to special access. UNE-P has always been used by CLECs as a means to serve small-business and residential customers, service that is below the level where a DS1 would be used.

Q. REGARDING CONVERSIONS OF OTHER UNEs TO SPECIAL ACCESS, MR. SILVER CONTENDS THAT THE CLECs' PROPOSAL WOULD "AMEND" SBC'S STATE AND FEDERAL SPECIAL ACCESS TARIFFS, DO YOU AGREE?

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[13] Staff Ex. 5.0, Hanson at 4, lines 89-91.

[14] SBC Ex. 1.0, Silver at 23-24.

A. No, because the purpose of these sections of the Amendment is to deal with—to establish—terms and conditions for transitioning CLECs' embedded base of UNEs onto other services. This is a one-time event, a unique circumstance. CLECs look at this Amendment as setting out the how, when and at what cost we move our service arrangements. We see it as a process by which we move away from one set of service arrangements and onto something else, a move required by the FCC's *TRO* and *TRRO* and the FCC's decisions on UNEs. Thus, it flows from the FCC's decisions on unbundling and the rates CLECs will pay are to be determined through negotiation and arbitration of changes to CLECs' 252 interconnection agreements.

SBC obviously looks at this Amendment very differently. It sees this Amendment as the document that gets CLECs off UNE-P and other declassified UNEs. In SBC's view, the second part of the transition—the "moving to" aspect of the transition—is not part of the transition at all. Once off UNE-P or any other UNE, the CLEC is to be treated as if it is starting over with a new service order, and any tariffed charges apply.

SBC tries to support its viewpoint by saying that its tariffs are inviolate and cannot be changed by this Amendment. But, CLECs are not attempting to change any of SBC's tariffs. CLECs are arbitrating terms and conditions for a *process* that begins with ceasing to use a UNE and ends with an arrangement that in many, many instances is physically identical to the one CLECs are no longer permitted to obtain under Section 251. The price is all that has changed. These are not new orders or new service arrangements (certainly not in any physical sense) in anyone's eyes except SBC's.

SBC's tariffs do not address and were never created in contemplation of the transition that is going on now.

Q. MR. HANSON APPEARS TO AGREE WITH SBC THAT TARIFFED CHARGES CONTROL. DO YOU HAVE ANY ADDITIONAL RESPONSE TO HIS TESTIMONY?

A. I am puzzled by and disappointed with Mr. Hanson's conclusion that the Project Administration charge that the Commission established in any earlier docket that governs conversions from special access to UNEs should not apply to the reverse situation — to conversions from UNEs to special access. It is my understanding that the work to be performed here is essentially the same. SBC certainly has offered no cost studies or any information to the contrary. Again, what is at issue here is a transition—a move from UNEs to something else in which the same physical facilities will be used but billed at a different price. This is a process that stems from the FCC's UNE decisions and it is those decisions that are to be implemented. There is no reason that a rate for a "UNE transition" cannot be part of the parties' ICA any more than any other UNE rate.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

VERIFICATION

Commonwealth of Pennsylvania)
) ss:

I, Frances McComb, being first duly sworn and on oath, state that I have read the foregoing Reply Testimony of Frances McComb in ICC Docket No. 05-0442, dated August 29, 2005, and that to the best of my knowledge, information and belief, all statements of fact contained in the said Testimony are true to the best of my knowledge and belief.

Frances McComb

Subscribed and sworn to before me, on this 29 day of August, 2005.

NAME

CAROL MERRITT
Notary Public, Oakland County, MI
My Commission Expires May 27, 2006

Notary Public

My Commission Expires: May 27, 2006